Filed 3/12/19 Reaume v. Reaume CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ALAN REAUME,

Plaintiff and Appellant,

v.

ALRIK JOHN REAUME,

Defendant and Respondent.

G054759 consol. w/ G054864

(Super. Ct. Nos. 30-2013-00679546 & 30-2014-00755936)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jamoa A. Moberly, Judge. Affirmed. Motion to strike denied.

Morris & Stone and Aaron P. Morris for Plaintiff and Appellant.

Law Offices of Cheryl L. Walsh and Cleryl L. Walsh for Defendant and Respondent.

* * *

Alan Reaume petitioned to invalidate a quitclaim deed executed by his mother, Carmel Reaume,[1] in favor of his brother, Alrik John Reaume (John),[2] prior to her death. Alan asserted the quitclaim deed was invalid both because Carmel lacked sufficient capacity at the time she executed it, and because it was the product of John's undue influence. The trial court rejected both theories, and rendered judgment in John's favor.

On appeal, Alan argues the judgment must be reversed because the court erred by refusing to admit certain documents into evidence and by refusing to apply the co-conspirator exception to the hearsay rule in connection with conversations involving John's wife. We are unpersuaded by the argument because in each case, Alan has failed to demonstrate either that the trial court's ruling was an abuse of its discretion or that any of the rulings were prejudicial.[3]

Alan also contends the court erred by denying his petition seeking recovery of attorney fees incurred in seeking to impose a conservatorship over Carmel. We find

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[1] Both parties refer to their late mother as "Carmel" in their briefs, although appellant Alan tells us her real name is Carmilla and the name "Carmel" is being employed "[t]o avoid confusion and in keeping with the convention adopted by the trial court." We will do so as well.

[2] Because the parties share the same last name, we refer to each by first name for the sake of clarity. No disrespect is intended.

[3] In his reply brief, Alan contends, for the first time, that the trial court also erred by applying the testamentary capacity standard in determining the validity of the quitclaim deed, rather than the contractual capacity standard. John has moved to strike this portion of Alan's reply brief, pointing out correctly that an appellant cannot raise an issue for the first time in his reply brief. (*Mansur v. Ford Motor Co.* (2011) 197 Cal.App.4th 1365 (*Mansur*).) As explained in *Mansur*, the appellate court "will not consider arguments raised for the first time in a reply brief, because it deprives [the respondent] of the opportunity to respond to the argument." (*Id.* at p. 1387-1388.) Applying that rule here, we will disregard the argument, rather than formally striking it from the reply brief.

no error in the ruling. The trial court found the attorney fees incurred by Alan were "both unreasonable and unnecessary," and he fails to convince us the trial court abused its discretion in reaching those conclusions.

FACTS[4]

Carmel passed away on November 4, 2014, leaving behind three children, Alan, John, and a daughter, Alaina Meek.

For most of the last 25 years of her life, Carmel resided in a home in Anaheim, which she purchased jointly with John in 1988. Carmel supplied the down payment on the home—approximately $40,000—while John's funds were used to make the monthly mortgage payments. Title to the home was initially held by Carmel and John as joint tenants, but in 1995, John transferred title to Carmel alone, to avoid exposing the house to a potential claim against John relating to his purchase of a car.

John lived in the Anaheim home with Carmel until 2007, when he moved out to get married. John offered to continue making the monthly mortgage payment, but Carmel relieved him of that obligation "essentially [as] a wedding present." In March 2013, John resumed making the mortgage payments.

In August 2013, Carmel executed a quitclaim deed, transferring title to the home to John. The deed was prepared at the request of John and his wife, Janice, by Aida Torres, a paralegal who had experience in dealing with the elderly as a notary. Torres was present when Carmel executed the deed and notarized her signature. According to the court's statement of decision, Torres testified "[s]he was present with Carmel for about thirty minutes and only spoke with Carmel. John answered the door and

[4] These facts are taken primarily from the trial court's statement of decision, which was not challenged by any party. The statement of decision reflects, in turn, that it is based in part on the parties' Joint Pretrial Statement, which is not included in our record.

was present but in the rear of the room. Carmel appeared aware of her surroundings. Carmel expressly told her she wanted John to have the house and that he pays for it." The court also noted that Torres testified that "[i]f she had been aware someone has dementia she would have required a doctor's authorization before notarizing a document," but that "she had no doubt that Carmel signed the deed of her own free will."

By late 2013, there was evidence Carmel was experiencing some degree of decline. Alan's wife, Ann Reaume, "testified to visits to Carmel several times per week increasing in mid-2013. Ann[]would write out checks and Carmel would sign them." But Ann testified that as of "July 2013 Carmel understood the expenses Ann[] expended for her and agreed to and did re-pay her." Moreover, as the trial court noted, Ann testified that "up through the last check of 9-12-13 . . . Carmel appeared to understand what she was paying and for what purpose." Additionally, "[Ann] did not accompany [Carmel] on any doctor visits or pick up any medications for her prior to September 2013. Her assistance was physical."

Further, the trial court noted that Alaina, who had resided in Oregon since 1990, visited Carmel in May 2013. "Alaina took a video during part of the visit to preserve her mother's history in her own words." In the video, "Carmel appeared to know to whom she was speaking. [However, Carmel] seemed to be living most of the time reclined on her living room couch. She appeared disheveled and unclean."

"Alaina [also] testified to the dirty and cluttered condition of the home. However she also testified that her mother usually slept on the couch even when they were kids and she had been a collector of knickknacks at swap meets for many years and was somewhat of a hoarder. Concerned for her physical well-being, [Alaina's husband Jim] Meek felt he had persuaded Carmel by the end of the visit to agree to move to her son Alan's home. A week later she refused to go." Moreover, "Alan testified that Carmel was sharp enough at that time to say no if he had tried to hoodwink her."

Unfortunately, Carmel suffered a fall on or about September 19, 2013, and sustained a head injury. She was admitted to Anaheim Regional Medical Center, where "[s]he was evaluated, tested and hydrated before release on 9-20-13 to a skilled nursing facility where she continued to receive care including monitoring of her thyroid levels until discharged on 10-17-13 to Fullerton Gardens Assisted Living. . . . Carmel did not express a desire to return to live in [her Anaheim home] after the fall."

In October 2013, Ann filed a petition to be appointed the conservator of both Carmel's person and estate. In November 2013, John filed his own petition seeking to be named Carmel's conservator. In December 2013, Alan filed a "consent to act as co-conservator," alongside Ann.

In January 2014, three months after Carmel moved into Fullerton Gardens Assisted Living, John held an "estate sale" of some of Carmel's personal property, along with some of his own, and deposited the proceeds from Carmel's items into her account. He did so without the knowledge and consent of Carmel, Alan, or Alaina, which was inappropriate and caused hard feelings. On January 28, 2014, Alaina filed a document nominating Alan and Ann to be Carmel's co-conservators.

On February 4, 2015, Alan and Ann filed a petition to recover the costs, including approximately $80,000 in attorney fees, they had incurred in connection with their petition to be appointed Carmel's co-conservators. The petition alleges that on March 28, 2014, the court appointed Linda Rodgers to serve as temporary conservator, but that due to "certain inexplicable delays, and other complications," the letters of conservatorship were not timely issued, and on June 5, 2014, the court granted Rodgers' request to no longer serve as Carmel's temporary conservator. The petition also states that during her brief tenure as conservator, Rodgers never "undertook any action on behalf of [Carmel]." On July 2, 2014, pursuant to a stipulation of the parties, the court appointed Sally Graham to act as Carmel's temporary conservator, and she served in that capacity until Carmel's death in November 2014.

Alan and Ann's petition also alleged that while there was no material dispute about the necessity of Carmel's conservatorship, there was "significant dispute regarding the identity of the person(s) who would be appropriated to serve in that capacity." They expressed vehement opposition to John's petition to be appointed as Carmel's conservator. Specifically, they alleged it "was and remains the belief of [Alan and Ann] that [John] . . . had Carmel execute [the] quitclaim deed" at a time when she "undeniably was suffering from dementia and lacked the capacity and/or ability to care for herself or her finances."

Alan and Ann alleged that John also acted improperly in that "without authorization, approval, or notice to any third party," he sold Carmel's personal property at an estate sale, and that in addition to seeking appointment as co-conservators, Alan and Ann had "sought to invalidate the improper transfer of [Carmel's property], and to have her Estate property restored." Although Alan's petition to invalidate the quitclaim deed is not included in our record, it appears he filed it on October 14, 2015, eight months after he and Ann filed the petition for recovery of attorney fees and costs.

The petitions were consolidated and tried together over a period of six days in December 2016. In addition to numerous percipient witnesses, including many family members, both sides presented expert testimony concerning Carmel's mental capacity at the time she signed the quitclaim deed.

John's expert, Dr. David Sheffner, opined that Carmel had sufficient capacity to execute the quitclaim deed in August of 2013. He stated that her "cognition was within normal limits with the exception that she intermittently, but to a minor degree compared to all of her verbalizations, had some defects in long-term memory." He also explained that "there was some medical event, we're not sure what, that resulted in a marked deterioration in September."[5]

[5] As John points out in his respondent's brief, Alan's opening brief provides individual summaries of the testimony offered by 13 witnesses, but not Dr. Sheffner's

By contrast, Alan's expert, Dr. Stephen Read, testified that Carmel lacked testamentary capacity and was extremely susceptible to undue influence by August 2013. The trial court expressly found that Read's testimony was not persuasive, in part because it "conflicts with the testimony" of several percipient witnesses, including Ann (Alan's wife), Jim (Alaina's husband), Torres (the notary) and Carmel herself, as depicted in Alaina's video.

Based on all of the evidence, the court denied Alan's petition to invalidate the quitclaim deed, concluding that Carmel had sufficient testamentary capacity when she signed it, and that she had signed it of her own volition rather than as a result of John's undue influence. The court also noted that Alaina, whom it characterized as "[t]he more neutral of the three children, . . . testified that she always considered the house as John's and did not support [Alan's] petition."

The court also concluded that although John's decision to hold an estate sale of Carmel's personal property, without notifying his siblings, was a "misstep [that] gave fuel to the fire to bolster [Alan's] challenge to the deed of August 2013, to the emotional detriment of [Carmel]," that misstep did "not provide the basis to charge John with the attorney fees and expenses incurred by [Alan and Ann] here." The court then observed that "[a]ll involved should have stepped back, promptly admitted the misstep, and moved on to the benefit of Carmel." Consequently, the court ruled that "[f]or the foregoing reasons as set forth above," it was denying Alan and Ann's attorney fee and

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testimony, and also Ann's testimony which was supportive of the conclusion Carmel retained significant mental capacity through at least August 2013. Alan's opening brief also ignores the evidence of Carmel's head injury in September 2013. Because Alan cannot obtain a reversal of the judgment unless he proves it is probable that, in the absence of the court's alleged evidentiary errors, he would have obtained a more favorable result, his failure to acknowledge unfavorable evidence significantly undermines his position.

cost provision "in its entirety," and expressly found "the attorney's fees and costs both unreasonable and unnecessary."

DISCUSSION

1. *Background Law*

"The burden is on the contestant to overcome the presumption that a testator is sane and competent." (*Estate of Mann* (1986) 184 Cal.App.3d 593, 602.) It is well settled that "[o]ld age or forgetfulness, eccentricities or mental feebleness or confusion at various times of a party making a will are not enough in themselves to warrant a holding that the testator lacked testamentary capacity." (*Estate of Wynne* (1966) 239 Cal.App.2d 369, 374.) "Nor does the mere fact that the testator is under a guardianship support a finding of lack of testamentary capacity without evidence that the incompetence continues at the time of the will's execution. (*Estate of Mann, supra,* 184 Cal.App.3d at pp. 603-604.) Instead, "[w]hen one has a mental disorder in which there are lucid periods, it is presumed that his will has been made during a time of lucidity." (*Estate of Goetz* (1967) 253 Cal.App.2d 107, 114.)

Moreover, "'It is thoroughly established by a series of decisions that: "Ability to transact important business, or even ordinary business, is not the legal standard of testamentary capacity. . . ." [Citation.]' [Citations.] Rather, testamentary capacity involves the question of whether, at the time the will is made, the testator '"has sufficient mental capacity to understand the nature of the act he is doing, to understand and recollect the nature and situation of his property and to remember, and understand his relations to, the persons who have claims upon his bounty and whose interests are affected by the provisions of the instrument."' [Citations.] It is a question, therefore, of the testator's mental state in relation to a specific event, the making of a will." (*Conservatorship of Bookasta* (1989) 216 Cal.App.3d 445, 450.)

2. *Admissibility of Trial Exhibits*

Alan contends the trial court erred by refusing to admit three trial exhibits into evidence, each of which he contends was relevant to his claim that Carmel lacked capacity to execute the deed in favor of John in August 2013. "A trial court's exercise of discretion in admitting or excluding evidence is reviewable for abuse [citation] and will not be disturbed except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9–10.) We find no abuse of discretion in any of the rulings, and even if there were any error, Alan has failed to demonstrate any resulting miscarriage of justice.

The first document, Trial Exhibit 5, is the confidential report prepared by Constance Catlapp, a court investigator appointed to evaluate a proposed conservatorship over Carmel. Catlapp testified at trial, but had little independent recollection of her evaluation of Carmel, even after Alan's counsel attempted to refresh her recollection with the report she prepared.

The report reflects that Catlapp interviewed Carmel in November 2013, approximately three months after Carmel signed the quitclaim deed and two months after Carmel's fall. The document incorporates Catlapp's summary of confidential medical information, and summarizes the information she gleaned from interviewing both Carmel and various other people, including family members and caregivers. The trial court refused to admit it into evidence, sustaining objections based on hearsay and lack of foundation.

Alan contends this report is admissible into evidence pursuant to Evidence Code section 1280, which specifies that a writing made as a record of an act, condition, or event, "by and within the scope of duty of a public employee," is "not made inadmissible by the hearsay rule" when offered "to prove the act, condition, or event" if it is "made at or near the time of the act, condition, or event," and "[t]he sources of

information and method and time of preparation were such as to indicate its trustworthiness." (Evid. Code, § 1280.)

This statutory test is factually intensive and in no way suggests that all reports prepared by public employees are admissible into evidence to prove the truth of their contents. Rather, Evidence Code section 1280 requires the court to ascertain the purpose of the report, the circumstances under which it was made, and the sources of information contained within it. (See *People v. Martinez* (2000) 22 Cal.4th 106, 119-129 [containing an extensive analysis of whether the trial court abused its discretion in ruling that exhibits qualified as official records under section 1280].)

In this case, it appears the only indisputable element of that test is the fact Catlapp prepared her report, which counsel clearly offered to prove the truth of its contents, within the scope of her public employment. Alan makes no showing that the report was intended to operate as a record of any particular "act, condition, or event," nor does he identify what "act, condition, or event" he was offering it to prove. Alan also fails to explain why the court would have been bound to conclude that Catlapp's "sources of information" or her method of preparing the report indicated "trustworthiness." These are all factual questions open to dispute; in failing to resolve any of them, Alan fails to demonstrate the court abused its discretion by refusing to admit the report into evidence under Evidence Code section 1280.

Even if the report were deemed admissible as a government record, not every piece of information contained in it would be admissible. Catlapp's report is largely a compilation and summary of what other people told her about Carmel and the conclusions those third parties may have drawn about her. Those statements were all hearsay as they were offered to prove the truth of their contents. In fact, they involved two separate layers of hearsay. As explained by our Supreme Court in *People v. Sanchez* (2016) 63 Cal.4th 665, 674-675: "Documents like letters, reports, and memoranda are often hearsay because they are prepared by a person outside the courtroom and are

usually offered to prove the truth of the information they contain. Documents may also contain multiple levels of hearsay. An emergency room report, for example, may record the observations made by the writer, along with statements made by the patient. If offered for its truth, the report itself is a hearsay statement made by the person who wrote it. Statements of others, related by the report writer, are a second level of hearsay. Multiple hearsay may not be admitted unless there is an exception for each level."

Alan contends the report was admissible as a business record under Evidence Code section 1271, which operates similarly to Evidence Code section 1280. But once again, Alan fails to acknowledge the specific requirements of section 1271, which authorizes admission of qualified business records only to prove a particular "act, condition, or event," and depends on an evaluation of whether "the sources of information and method and time of preparation were such as to indicate its trustworthiness." (Evid. Code, § 1271, subd. (d).)[6] Having failed to address any of those factual elements in his brief, Alan cannot establish the trial court abused its discretion by refusing to admit the report into evidence pursuant to the statute.

Finally, Alan contends the report was admissible pursuant to Evidence Code section 1220, which provides that admissions of a party to the action are not made inadmissible by the hearsay rule. In this regard, Alan is focusing specifically on the portion of Catlapp's report summarizing her interview with John, and although he does not mention it, the record reflects that his request was for the court to allow him to prepare a "redacted" version of Catlapp's report, excluding "all references by outside

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[6] To the extent Alan acknowledges these factual requirements, he appears to contend they are satisfied by a custodian of records declaration which recites, in conclusory terms, that the documents are prepared "in the ordinary course of business at or near the time of the act, condition or event" and by a "method of recordkeeping . . . established to ensure [their] trustworthiness." The trial court is not bound by such conclusory assertions in its assessment of whether the documents qualify under the statutory test.

parties except for [John]." The court declined, after clarifying that Catlapp's report merely summarizes the information John gave her, without specifically quoting him on the particulars. Alan fails to explain why the court's ruling abused her discretion, and we do not find that it did.

In any event, even if the court had erred by refusing to admit Catlapp's report, Alan has made no showing the error was prejudicial. His only assertion in that respect is his contention that "Catlapp's ability to testify was crippled by the court's refusal to allow her to testify from her report." But Catlapp has no right to testify "from her report" before any required foundation has been laid.

Alan next contends the court erred by refusing to admit Exhibit 18, a "discharge summary" produced in connection with Carmel's stay at Anaheim Regional Medical Center in September 2013, following her head injury. On appeal, Alan contends the court erred in refusing to admit the discharge summary "as a business record," but our record does not reflect that Alan made any effort to demonstrate the document was admissible on that basis in the trial court. We cannot conclude the trial court abused its discretion in rejecting an argument not made to it.

Beyond that, we cannot see how Alan was prejudiced by the court's ruling. On appeal, he contends this discharge summary is significant because it reflects that Carmel's son, "Alex," made statements concerning Carmel's confused mental state to the doctor who dictated the summary, including that she "has been like this for quite some time and was told she has probably dementia." During trial, Alan's counsel questioned John about that statement, suggesting that "Alex" was an approximation of Alrik—John's first name—and that it was John who had made those statements to the doctor. However, John denied any knowledge of the statements, claimed he had no idea who the doctor might have been speaking to, and insisted he never used the name Alrik except when signing legal documents. Thus, without admitting the document into evidence, Alan had

an opportunity to question John about the alleged statements, and the trial court was able to judge the credibility of John's denial.

Last, Alan contends the court erred by *delaying* the admission of Exhibit 30, a discharge summary prepared by a doctor at HealthCare Partners, the skilled nursing facility where Carmel stayed after her discharge from Anaheim Regional Medical Center. Among other things, the document reflects that during her time at the skilled nursing facility, Carmel was sent back to Anaheim Memorial Hospital on two occasions due to her "acute change in mental status." It then states that while Carmel was at the hospital, she had a "Mini Mental State Examination," did poorly on it, and was evaluated by a psychiatrist, Dr. Jose Gamboa, who "deemed the patient to have cognitive deficit, senile dementia, and no capacity to make decisions."

According to Alan, the court's initial refusal to admit the document into evidence when first requested was prejudicial because it left him "unable to question the witnesses about the exhibit." Specifically, Alan claims that if the document had been admitted into evidence earlier, he could have relied on its statement that Carmel had "no capacity to make decisions" during his cross-examination of John's expert witness, who opined that despite the evidence that Carmel had been suffering from dementia for a few months, she did retain capacity to execute the quitclaim deed in August of 2013. We disagree.

Even assuming the skilled nursing facility's discharge summary was admissible for some purpose, the specific statements Alan focuses on—relating to what occurred during the periods Carmel cycled back to the hospital, and the conclusions purportedly drawn by Gamboa, the psychiatrist who evaluated her there—were not admissible. Those statements, even if included in a report that is otherwise admissible as a business record, present a second level of hearsay that remains inadmissible. (*People v. Sanchez*, *supra*, 63 Cal.4th at pp. 674-675; *Alvarez v. Jacmar Pacific Pizza Corp*. (2002)

100 Cal.App.4th 1190, 1205 ["When multiple hearsay is offered, an exception for *each* level of hearsay must be found in order for the evidence to be admissible"].)

Thus, even a medical professional with expertise cannot simply incorporate the conclusions of other professionals in his written report, and thereby make those conclusions admissible as well: "an expert has traditionally been precluded from relating *case-specific* facts about which the expert has no independent knowledge. Case-specific facts are those relating to the particular events and participants alleged to have been involved in the case being tried. Generally, parties try to establish the facts on which their theory of the case depends by calling witnesses with personal knowledge of those case-specific facts." (*People v. Sanchez, supra*, 63 Cal.4th at p. 676.) The proper way to admit the conclusions of Gamboa, the hospital psychiatrist, would be to call *him* as witness.

3. *Admissibility of Witness Testimony Regarding Janice Reaume*

Alan also contends the court abused its discretion when it refused to allow him to question Jim, Alaina's husband, regarding the content of his conversations with Janice Reaume, John's wife. Specifically, the court sustained a hearsay objection to the question "At any point in time has Janice Reaume ever made a comment to you with regard to Carmel's estate, or assets, particularly?"

Alan's counsel responded to the hearsay objection by explaining he was attempting to treat Janice Reaume as John's co-conspirator under Evidence Code section 1223, on the basis there were exhibits showing she arranged for the notary who prepared and witnessed the contested quitclaim deed, and because her anticipated testimony would show she was involved in the contested transfer.

The trial court rejected the co-conspirator argument, noting there was no allegation in the pleading asserting Janice was a co-conspirator. On appeal, Alan

contends that ruling was erroneous because "there is no 'pleading' requirement in section 1223."

This is true, but Evidence Code section 1223 makes clear that the co-conspirator exception to the hearsay rule can be invoked only after the "admission of evidence sufficient to sustain a finding" that "[t]he statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy" or "in the court's discretion as to the order of proof, subject to the admission of such evidence." (Evid. Code, § 1223, subds. (a) & (c).)

In this case, Alan made no such evidentiary showing regarding Janice before attempting to invoke the co-conspirator exception against her. Instead, he argued that "as will be shown [when Janice] is a witness on the stand later in this trial, [she] was involved in the contested transfer of property and is therefore a co-conspirator under this section." We find no abuse of discretion in the trial court's refusal to take action based on that speculative and conclusory assertion.

In any event, Alan has made no showing of prejudice stemming from the court's refusal to allow his questioning of Jim. He claims the court cut off "highly probative testimony," but in the absence of any description of what that testimony would have been, let alone why it would have been probative on any material disputed issue, the assertion is unpersuasive.

4. *Failure to Award Attorney Fees Incurred by Alan and Ann in Seeking Conservatorship*

Alan's final contention is that the court abused its discretion in denying the petition he and Ann filed for an award of attorney fees and costs they incurred in seeking a conservatorship over Carmel. His complaint is two-fold. First, Alan claims the court's statement of decision reflects it engaged in no distinct analysis of the petition for attorney fees, and thus denied the petition for improper reasons. Second, he claims the court was obligated to award attorney fees because "[e]ven an unsuccessful attempt to obtain

appointment of a conservator entitles the petitioner to attorney fees if the effort provides some benefit to the intended conservatee." In this case, Alan argues all parties agreed Carmel needed a conservator. Neither claim is persuasive.

Alan's complaint about the statement of decision is unpersuasive both because it fails to acknowledge his obligation to "bring to the attention of the trial court alleged deficiencies in the court's statement of decision [or] waive the right to complain . . . on appeal" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1132), and because it mischaracterizes the trial court's findings.

The court's statement of decision did not, as Alan contends, merely "appl[y] its conclusions from the property challenge to the petition for attorney fees for the conservatorship," thus conflating the two petitions. Instead, after analyzing the evidence pertaining to the validity of the quitclaim deed, and stating its conclusion that "Carmel signed the deed of her own volition and did what she wanted to do and not as the result of John's influence," the court turned to the distinct issue of John's January 2014 estate sale and its effect on the parties' emotions.

The court characterized the estate sale as a "misstep [that] gave fuel to the fire to bolster [Alan's] challenge to the deed of August 2013, to the emotional detriment of [Carmel]," but then found that misstep "*does not provide the basis to charge John with the attorney fees and expenses incurred by [Alan and Ann] here*." (Emphasis added.) Rather, the court commented that "[a]ll involved should have stepped back, promptly admitted the misstep and moved on to the benefit of Carmel." The court concluded that "[f]or the foregoing reasons as set forth above," it was denying Alan and Ann's attorney fee and cost provision "in its entirety," and expressly found "the attorney's fees and costs both unreasonable and unnecessary."

Thus, it is apparent the trial court concluded that the self-described "vehemence" with which Alan and Ann pursued the conservatorship issue was an angry overreaction to John's estate sale, and that everyone involved, including Carmel, would

have been better served if Alan and Ann could have let that anger go.[7] In the court's view, it was their inability to do so, rather than their belief that Carmel truly needed a conservator that ultimately drove their expenditures. Hence, the court's determination that "the attorney's fees and costs [are] both unreasonable and unnecessary."

Having misconstrued the reasoning behind the court's denial of the attorney fee petition, Alan nonetheless argues the ruling cannot be sustained. He relies on *Estate of Moore* (1968) 258 Cal.App.2d 458 (*Moore*), and *Conservatorship of Estate of Cornelius* (2011) 200 Cal.App.4th 1198, 1205 for the proposition that even an unsuccessful conservatorship petitioner is entitled to recover fees if the conservatorship benefitted the conservatee. But in *Moore*, the court made clear the petitioner had acted in good faith when incurring the fees. (*Moore*, *supra*, 258 Cal.App.2d at p. 462.) Here, the trial court concluded the fee petition was fueled primarily by Alan's disproportionate anger.

It is also not clear here that the conservatorship actually benefitted Carmel, or that the court viewed it as necessary. As Alan and Ann allege in their petition, the trial court appointed Graham—the temporary conservator who actually served—pursuant to the parties' stipulation, not because the court itself made an independent determination that a conservator was actually required at that time. Indeed, by the time Graham was appointed in July 2014, Carmel had already been in the assisted living home for nine months; she would only live another four months. As it appears that both Carmel's personal and financial needs were being met during that initial nine-month assisted living period, Alan fails to explain how Carmel benefitted by her brief conservatorship, and we cannot presume such benefit.

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[7] The petition itself supports that conclusion as it specifically alleges that John's estate sale was a factor in their pursuit of the conservatorship.

For all of the foregoing reasons, we find no error in the court's denial of Alan and Ann's petition for attorney fees and costs.

DISPOSITION

The judgment is affirmed. John is entitled to his costs on appeal.

GOETHALS, J.

WE CONCUR:

MOORE, ACTING P. J.

IKOLA, J.